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IN THE

Supreme Court of the United States

October Term, 1962

No. 563

HONORABLE STEPHEN S. CHANDLER, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA,

Petitioner,

v.

OCCIDENTAL PETROLEUM CORPORATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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I

The petition misstates the case.

The petition for certiorari wholly misstates the proceedings and subject matter before the Court of Appeals and the Judicial Council, and also their determinations and findings, the evidence which made those findings inescapable and urgent, and the powers (statutory and inherent) under which they made their determinations.

The actual subject matter was not bias alone but *overt judicial misconducts*,—misconducts so shocking and so vio-

lative of law and judicial propriety as to render the Judge's removal an inescapable duty, whether that duty and the power to fulfill it be found in the all-writs statute (28 U. S. C. §1651), or in the inherent scope of appellate jurisdiction to effectuate the manifest ends of justice, or in the function conferred by 28 U. S. C. §332 on each Judicial Council to "make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit", and to require the district judges to "promptly carry (them) into effect".

After full hearings and taking of testimony on four days, with all parties in interest participating and Judge Chandler represented by counsel, the Court of Appeals and the Judicial Council, both sitting *en banc* with five judges at Judge Chandler's own request, unanimously made the following findings (23a-29a):

> "1. The Judge has conducted 'closed-door hearings, meetings and discussions in chambers' at which some but not all of the interested parties were present at the invitation of the Judge and from which the attorneys for some of those present were excluded with the direction of the Judge that the fact of such proceedings and the matters which transpired therein should not be reported to those attorneys. At these hearings, meetings and discussions matters pertaining to the bankruptcy estate and materially affecting not only those present but those excluded therefrom were considered.
>
> 2. After the filing of the petition in case No. 6972, the Judge tried to prevent a court officer from the performance of his official duties and responsibilities in matters relating to the bankruptcy estate.

3. The Judge has a personal enmity, hostility, bias and prejudice against Occidental and cannot therefore fairly and impartially hear and determine any matters involving Occidental.

4. The proper administration of justice requires that all further proceedings in connection with the Parker bankruptcy be heard and determined by another judge."

In the Judicial Council's order paragraph 4 *supra* reads (28a):

"4. The effective and expeditious administration of the business of the United States District Court for the Western District of Oklahoma requires that all further proceedings in connection with the Parker bankruptcy be heard and determined by another Judge."

Ironically, these decisive findings receive in the present petition only three lines of cursory narrative mention and paraphrase (p. 6). Thereafter they drop out of sight.

The petition makes no attempt whatever to controvert those findings factually, or to excuse such gross judicial misbehaviors and acts of fixed hostility.

Those findings and the facts which they express with judicial restraint made any other result inconceivable, and exclude any merit in this petition.

The emergency was immediate and inescapable. Temporizing would nullify due process of law throughout the whole future of the case.

Hence, for the sake of realism and to thwart diversion from actualities, we shall set forth the actual facts. The petition has handled them by disregarding them.

II

Summary of Argument

The facts stated in Occidental's petitions to the Court of Appeals and proven without contradiction at its hearings on March 12 and 13 and on April 10 and 20, 1962 establish:

(1) For some months previously Judge Chandler had been conducting repeated hearings in chambers affecting and directing the procedure and merits of the reorganization proceedings. In such in-chambers proceedings he had repeatedly expressed violent and abusive prejudgment and antipathy as to the rights and actions of Occidental, a highly interested party; had constantly denounced Mr. Hammer, its president, in extremely indecent and slanderous language; had personally ordered that Occidental and its attorneys be given no notice thereof and be excluded therefrom; and had personally directed that they not be allowed to procure copies of the official transcripts recorded by the official court stenographer.

(2) Even after the filing of the affidavit of disqualification Judge Chandler continued to act, and in his order of March 9 he evaded the requirements of the statute (28 U. S. C. §144) by referring to a conversation which he said he had with a third person that he intended to disqualify himself as to "*any question of fact*" involving Occidental or Hammer (21a, 22a).

(3) When the court stenographer received the subpoena from the Court of Appeals for the production of his rec-

ords of the in-chambers proceedings, Judge Chandler seized them by order to the stenographer, and by threats endeavored to have him testify falsely as to his non-possession of them, the role in which he had acted, and the nature of the in-hearing proceedings.

(4) In the face of these very serious charges of judicial misconducts, made in Occidental's petitions and in the testimony of the official stenographer, and in the face of the scandalous revelations when the official transcripts were finally made available to the Court of Appeals, Judge Chandler replied to Occidental's petition with an "answer" wholly illusory, and replied to the proof before the Court merely with evasive communications addressed not to the Court but to third persons,—at the same time refraining from appearing in the Court of Appeals.

(5) Several days after the hearing on April 10 closed with the agreement of all present that "the Court regard this matter as finally submitted for decision" (Tr. 45), Judge Chandler requested by telegram a "hearing *en banc*", and that "further delay be avoided" (Hearing April 20, Tr. 3, 4). The Court "conferred immediately", and arranged for the earliest possible day on which five judges could assemble from this huge Circuit, namely Good Friday, April 20; and invited Judge Chandler to be present. But instead of his appearing, his new counsel arose after the five judges had ascended the Bench, and stated that the Judge had become occupied with another matter, of the nature of which counsel had not been informed (Tr. 32-34). Thereupon nothing was submitted; and the Judge's counsel excused himself from making any argument because he

had time only to read the record "hurriedly" (Tr. 28). All counsel then agreed that the decision *en banc* be made on the record "as it has already been produced and transcribed" (Tr. 9-11).

(6) The facts were pregnant with the decision. The integrity of the administration of justice was critically and urgently at stake. Furthermore, immediate action was necessary to protect the Court's ultimate appellate power over the reorganization proceeding.

If precedents for the obvious add anything, they are *a fortiori*: *LaBuy* v. *Howles Leather Co.*, 352 U. S. 249, 254-5; *United States* v. *Ritter*, 273 F. 2d 30 32 (10 Cir.), cert. den. 362 U. S. 946; *McClellan* v. *Carland*, 217 U. S. 268, 280; *Ex Parte United States*, 287 U. S. 241, 246.

III

The secret proceedings by Judge Chandler in chambers, and Occidental's petitions to the Court of Appeals

(1) Occidental had 40,000 of the 140,000 shares of preferred stock of the bankrupt Parker Petroleum Co. (Hearing by Court of Appeals, March 13, Tr. 88-9).

On February 7, 1961, the United States Court of Appeals reversed an order made by Judge Chandler imposing large liability on Occidental in the Parker bankruptcy; and on April 11, 1961, it denied "petitions for rehearing and clarification". *Occidental* v. *Walker, Trustee*, 289 F. 2d 1 (10th Cir.).

On February 1, 1962 in the Parker bankruptcy proceeding, Francis S. Irvine, counsel for the Trustee of Parker

Petroleum Co. and later also for Judge Chandler herein, said (as he admitted in the Court of Appeals) to Bert Barefoot: "Judge Chandler has asked me to tell you this, and I tell you nothing more". The "this" was that neither Barefoot nor Fellers (counsel for Occidental) was "to communicate with Judge Chandler concerning any matter involving the Parker Petroleum Company matters" (Hearing by Court of Appeals, March 13, Tr. 80-3).

On March 2, 1962, Occidental and Armand Hammer, its president, applied to Judge Chandler upon an extended and detailed affidavit under 28 U. S. C. §144 to disqualify himself from hearing and deciding certain matters then pending before him, including a motion set for hearing on March 13, and designating another judge pursuant to 28 U. S. C. §292(b) (R. pp. 2-ll-ffh). Certification to the good faith of the application was made by Howard W. Rea and Bert Barefoot, Jr., as counsel (R. p. 2-hh).

That affidavit, quoting from the transcript of proceedings before Judge Chandler on January 23 and 24, 1962, and obtained by Occidental on February 26, set forth many instances where the Judge had expressed extreme hostility and antagonisms to Occidental and Hammer, its president: had assailed their ethics, morals and good faith; had accused them of "double-crossing" and of trying to "choke this company to death for the benefit of somebody else so that they can milk it"; had declared: "I couldn't be hoodwinked into changing my mind about the conclusions that I have come to about Hammer at all", and "I've got my mind made up": had voiced prejudgments adverse to Occidental; and had manifested determined resistance to the interpretation of Occidental's rights in the aforesaid decision of the Court of Appeals reversing him (289 F. 2d 1).

On March 6, having been informed that the Judge was continuing to act (R. p. 2-c) and that there had been secret hearings in chambers from which Judge Chandler had excluded it and denied its right to transcripts, Occidental filed with the United States Court of Appeals a petition for a writ of mandamus and/or prohibition restraining the Judge as to matters affecting Occidental (R. pp. 2 hh).

That petition, verified by Hammer, stated on information and belief that in late January or early February Judge Chandler had conducted in chambers crucial proceedings in which he sat as "The Court", the court's official stenographer recorded verbatim, and the merits of the cause and the rights of the parties were considered and acted upon; that by the Judge's direction neither Occidental nor its counsel was given notice thereof; that, in accordance with its rights under 28 U. S. C. 753(b) and (c), Occidental had repeatedly requested copies of the official transcripts and had offered to pay for them; but that (R. pp. 2-c-d):

> "the Court Reporter has been instructed and advised to deny to Petitioner's counsel Bert Barefoot, Jr., copies of transcripts of any such proceeding at which he was not present, including hearings affecting the merits of this controversy of which he was not given notice and from which he was excluded."

The petition further stated that Occidental should forthwith have such transcripts, and (R. p. 2-d):

> "also should be entitled to rely upon any and all statements that might be cited as showing personal bias and prejudice made at any hearing or hearings had in these proceedings during January and February of 1962 at which testimony was taken, stenographic transcript

was had, and of which transcripts have heretofore not been available to Petitioner or its counsel, notwithstanding its repeated requests to obtain the same."

The petition then recited pending matters before Judge Chandler in which Occidental was directly interested, and in which he continued to act judicially and hostilely notwithstanding Occidental's application to disqualify himself (R. pp. 2e-h).

(2) On March 6 the Court of Appeals issued to Judge Chandler an order to show cause, with a stay, returnable before it on March 12 (R. p. 3).

On March 7 the order was served (R. p. 4); also a written statutory request for the transcripts was filed by Occidental pursuant to 28 U. S. C. §753(b) (Hearing by Court of Appeals, March 13, Tr. 78).

On March 9 Judge Chandler filed in his court an "order" which evaded denial of the secret hearings but adjudged "legally insufficient" Occidental's application for disqualification (21a). His "order" recited that he had no "intention of trying or deciding *any question of fact* in this proceeding involving applicants" (21a). (Emphasis ours.) He neither disqualified himself nor assigned another judge; but referred to what he said he had conversationally told a "special master." The wording was a masterpiece of ambiguity and personal non-commitment.

On March 12, 1962, Judge Chandler's "answer" was filed in the Court of Appeals. It contained no denial whatever of the aforesaid private in-chambers hearings and actions, or of the petition's allegations as to their subject matter, or of the petition's quotations of Judge Chandler, or of his directions to exclude Occidental's attorneys and

to refuse them the transcripts. It was wholly illusory, and did little more than denounce Occidental's petition as "an abuse" and "an imposition", and pray dismissal (R. p. 4).

(3) On March 12 Occidental filed with the Court of Appeals a "petition for leave to amend and supplement petition for writ of mandamus and or prohibition" (R. pp. 5-a to w).

This second petition pointed out the artificialities and reservations of Judge Chandler's "order" of March 9; set forth additional judicial acts of hostility and impropriety; averred that on January 30, 1962, and, according to Occidental's information on other associated dates, Judge Chandler had held in his chambers secret hearings from which Occidental and its counsel were excluded and as to which copies of the transcripts were refused by the Judge's direction; and charged (R. p. 5-l):

> "Under such circumstances the Judge's action in setting a hearing, ordering depositions on injudiciously short notice, and denying transcripts of testimony to Petitioner and its counsel where the testimony on information and belief concerned the matters to be explored on deposition, all while there remain an unadjudicated Affidavit of Bias and Prejudice, not only constituted an improper exercise of jurisdiction prior to a determination on the said Affidavit, and a practical denial of its Affidavit (as well as its motion for a stay of depositions), but in addition constituted a refusal to enforce rules and statutes (*e.g.*, Section 753(b) of Title 28, United States Code)."

The petition concluded with prayers for orders by the Court of Appeals totally restraining Judge Chandler from acting further in the case, and (R. p. 5-r):

"3. Ordering and directing that no hearing shall be had or deposition taken of Petitioner and its officers and employees in this proceeding until Petitioner and its counsel have been furnished with copies of the transcripts of all proceedings, 'conversations' or 'conferences', in chambers or elsewhere, at which witnesses or parties were questioned and of which a stenographic record was taken, the same to be made available to Petitioner, pursuant to the terms of Sections 753(b) of Title 28, United States Code, forthwith."

IV

The agreement by Judge Chandler's counsel in the proceedings in the Court of Appeals that it "has this authority," *i.e.*, supervisory powers

On March 13, faced with Occidental's petitions and the shocking testimony of the official court stenographer on March 12, there was the following dialogue between the Court of Appeals and Mr. Francis S. Irvine, attorney for Judge Chandler (Hearing, March 13, Tr. 159):

> "The Court (Chief Judge Murrah): * * * This Court sits to exercise its supervisory powers, and there are plenty of cases, if you will refer to them in the books, from this Court, to illustrate that very point. We are not just sitting here to decide the legal sufficiency of an affidavit to disqualify a trial judge. We are sitting here in the exercise of our supervisory powers as a court, to determine whether or not in the whole matter of the proceedings here there should be some action on the part of this Court, in the exercise of those powers, which are undisputed. And in doing so, we apprehend that it goes beyond the mere legal sufficiency of an affidavit to disqualify.

Is that right?

The Court (Judge Pickett): Yes.

The Court (Judge Breitenstein): Surely.

The Court (Chief Judge Murrah): Now, I know that you act like you don't like it, but that's the way it is.

Mr. Irvine (Judge Chandler's Counsel): No, sir, I have no—I know that the Court has this authority; I agree with the authority.

The Court (Chief Judge Murrah): Very well, let's proceed. Proceed."

V

The hearing by the Court of Appeals on March 12, 1962, and the crucial testimony of Ingram, the official court reporter in Judge Chandler's court

The transcript of this hearing covers 51 pages, and is incorporated in this Record (pp. 7, 7a). All parties appeared by counsel. Judge Chandler appeared by Francis S. Irvine, his attorney (Tr. 2).

The first witness was Russell H. Ingram who testified that for nearly four years he had been "Official Court Reporter, United States District Court, Western District of Oklahoma", and had been "assigned to Judge Chandler" during the Parker Petroleum matter (Tr. 30, 31).

Irvine immediately objected to his testifying on the very ground (among others) that these "were private conferences held within the confines of the Judge's chambers" (Tr. 29).

The objection being overruled, Ingram testified that he appeared pursuant to subpoena out of the Court of Appeals, calling for him and all his records in the Parker

proceeding; but that he did not have his records for the hearings in chambers on January 20, 25, 29, 30, and February 2 (Tr. 32, 40), because on the previous day (March 11) and before he had made his transcriptions, Judge Chandler, with knowledge of the subpoena, took his notebooks from him under the following circumstances (Tr. 42-44).

Judge Chandler had telephoned him at 9:30 a.m. (March 11) to come to his home and bring "everything that I was going to bring to Denver". Ingram was kept there until 3:00 p.m. Paul Duncan, an attorney from Oklahoma City whom the Judge had appointed a Special Master (22a), also came there. Ingram had with him his notebooks "bundled up with a rubber band". The Judge "picked out the notes that they [Occidental] do not have a transcript of", and said: "All right. Now, I've had possession of these all this time" (Tr. 42-48). Thereupon:

> "Paul (Duncan) showed up and we went through this whole thing again, that they had been in his (the Judge's) possession. And also, they went through the idea that I had been acting as his secretary, that I wasn't an official reporter and that I wasn't entitled to the notes in the first place, and that that's what I'd testify to today. • • • Paul Duncan said: • • • 'If you want to take the notes, you can take them as a Judge.'
>
> "I went home and I was scared and I was confused and I was mad."

About 7:00 p.m. Ingram decided that he must be "a man or a mouse", and went back to the Judge's home and told him (Tr. 44-5):

> "I'm going to go out there (the Court of Appeals) and I'm going to tell the truth on what happened.

> I've got this subpoena from the Circuit Court, asking for everything that I had in my possession, and all that stuff was in my possession. * * * I'm going to say that they were taken."

Judge Chandler then told Ingram that if he had the notes he had them "illegally"; that "it wasn't a hearing or a proceeding"; and that somebody must have "got to me" and I had "sold out". "How much have they paid you?" Ingram reminded the Judge that he (the Judge) had personally instructed him "in chambers that they (Occidental) couldn't have them (the transcripts). The Judge then replied: "All right, boy, you're on your own. The only person you have to fear is me." Ingram answered: "Either I'm going to take those notes with me or you're going to order me not to take them"; and the Judge finally said: "All right, I order you not to take them" (Tr. 46-8).

Ingram further testified in response to a question from Barefoot, Occidental's attorney (Tr. 48):

> "I had been instructed not to furnish any transcript to you that you were not present at."

In response to a question by Judge Breitenstein, Ingram also testified that at that time he was on the federal payroll "as an official court reporter" and not "as a secretary" or "law clerk" (Tr. 50-1). Mrs. Thomas was the Judge's law clerk (Tr. 80).

The shocking facts thus narrated under oath by Ingram were never contradicted in any of the four hearings in the Court of Appeals. Neither Judge Chandler nor Paul Duncan ever personally appeared in the Court of Appeals.

Amazingly the instant petition for certiorari does not mention Ingram or his above testimony.

VI

The hearing by the Court of Appeals on March 13

(1). The transcript of this hearing covers 155 pages, and is incorporated in this Record (7, 7a).

Mr. Irvine read into the record a telegram sent him that day by Judge Chandler. Significantly it did not contradict Ingram's testimony of the day before, but evasively said (Tr. 55):

> "'Mr. Ingram's statement that I refused to permit him to take certain transcripts is correct. I advised him that they were notes of conversations that did not constitute hearings or proceedings contemplated by statute and could be obtained only upon request of parties present. I further advised him that when he took them from my desk to transcribe some of them at my request, they were legally still in my constructive possession and he must return them to me, which he did. I am sending them by courier, arriving Braniff flight 360, but am of opinion they could only be obtained by Occidental, Hammer, or Hayutin, in the event action brought against them by Western.' Signed: 'Stephen S. Chandler'."

Obviously "constructive possession" was no answer to a subpoena duces tecum from the Court of Appeals directed to the person who had the actual possession.

Mr. Irvine then admitted that he himself had been present at the private in-chambers proceedings, and that they had "pertained particularly to the Western plan of reorganization and the financing thereof" (Tr. 56-7). The prior decision of the Court of Appeals, 289 F. 2d 1, showed

how vitally Occidental would be interested in any plan of reorganization, and thus emphasizes the enormity of its exclusion from the judicial planning thereof.

(2) At the afternoon session March 13, Ingram's stenotype notes for the in-chamber proceedings on January 20, 25, 29 and 30 and February 2 having arrived, they were marked in evidence, without objection, as Occidental's exhibits 12, 13, 14, 15 and 16 (Tr. 179-184), such exhibits to include the transcriptions which the Court of Appeals directed Ingram to make as quickly as possible so as to be available for all counsel well in advance of a further court session which Irvine on Judge Chandler's behalf requested be held for briefing and oral argument (Tr. 186-7, 190-1). The Court stated (Tr. 191):

> "Of course, there would be no point in hearing any argument on the matter until we have the transcript of these minutes."

Ingram said that he could be ready in several weeks. The Court then recessed until April 10.

Ingram's transcriptions are now part of the present record before this Supreme Court and as a package are on file with its Clerk. They are marked with the same exhibit numbers as the stenotype notes from which they were transcribed, namely Petitioner's Exhibits 12, 13, 14, 15 and 16, and bear on the last pages Ingram's signed certificate of accuracy.

Amazingly the instant petition for certiorari does not mention these Ingram transcripts or their contents.

VII

The hearing by the Court of Appeals on April 10. What Ingram's transcripts finally revealed.

(1) The appearances were the same as before. The transcript covers 164 pages, and is incorporated in this Record (R. 12, 13).

Ingram's transcriptions of the stenotype notes then immediately revealed the reasons for Judge Chandler's directions to keep secret from Occidental these doings in chambers and also for his shocking conduct against Ingram after the subpoena from the Court of Appeals. Their accuracy has not been challenged. They total 785 pages.

In the first place, the transcripts record official proceedings.

Each is entitled "In the Matter of Parker Petroleum Co., Inc., a corporation, No. 10,807"; "Reporter's Transcript of Proceedings had in Chambers in the United States Court House"; "Before the Honorable Stephen S. Chandler, Chief Judge". Each recites the "Appearances" of the parties present. Those thus present varied, but the total "appearances" comprised Paul C. Duncan, "Special Master"; Francis S. Irvine, attorney for the Trustee; Richard M. Barnholt, president of Western Oil Fields; Harold R. Berglund, a vice-president and director of Western Oil Fields; J. Kirk Windle, attorney for the S. E. C.; Earl Brown, attorney for Orville Parker; F. A. Bruno, attorney for Western Oil Fields.

In the second place, in these secret hearings Judge Chandler gave advice and made judicial directions and

determinations. See, for example, transcripts: January 20, Vol. I, pp. 12, 13, 55, 114-5, 140, 147; Vol. II, p. 54; January 25, pp. 53, 63-5, 76; January 29, p. 64; January 30, pp. 44-5, 46-8; February 2, pp. 48-9, 65, 84, 135, 189, 190, 198. See also Court of Appeals Hearing, March 13, Tr. pp. 69-71.

For example, the transcript records that at the hearing on January 20, Judge Chandler, invariably quoted as "The Court," said to those present (Vol. II, p. 20):

> "The Court: I'm going to make another statement, and I make it as—in my official capacity as a judge."

Again (Vol. II, p. 6):

> "The Court: • • • I'm speaking, it's going in the record."

In the third place these transcripts teem with invidious and indecent references to and prejudgments of Occidental and Hammer its president,—all uttered without any judicial substantiation or due process of law at the time or since. The following are some examples.

On January 25 Judge Chandler, speaking to Barnholt, President of Western Oil Field, Inc., concerning Hammer, said (T. 1/25/62, 72-3):

> "The Court: • • • I don't know whether we are smart enough to pull it out or not. • • • You have been terribly mistreated. It's the damnest (sic) thing. There is something about it when I see a sonofabitch undertake to—just 'cause the other man is good—I just don't see how they can do it."

Similarly on January 20 (T. 1/20/62, Vol. II, 25):

> "The Court: * * * He's (Hayutin's) not trying to protect you against Hammer and take a chance on failing to get the money from Hammer. I don't know what his relationship is, but he is so close to him and he knows him so well that he knows he'd do anything that they call good business practice, but I call it just stealing.
>
> Mr. Barnholt: Uh-huh.
>
> The Court: They would just as soon rob your company and take it over as—
>
> Mr. Barnholt: There is no question about it."

And again on January 20, referring to Hammer (T. 1/20/62, Vol. II, 17):

> "He's a wolf, and I wouldn't want even to take his money."

And still again on January 20 (T. 1/20/62, Vol. II, 41):

> "I'm not trying to be smart or tough or anything, but I've still got in my craw a man who would walk into Federal Court to buy stock rights and Mr. Hammer did * * *."

At the first hearing on February 2, 1962, the Judge referred to the persons against whom the trustee is said to have claims, including Dr. Hammer, as "these vultures" (T. 2/2/62, Vol. I, 176). At page 169 of the same transcript he declared: "They are absolute pirates." At page 195 he referred to them as "these shady characters." He called them "fast workers" (T. 2/2/62, Vol. I, 206), and cast every sort of aspersion on them: "* * * where you get in a position to have to deal with them, you need a bodyguard and a lawyer and everything else" (T. 2/2/62, Vol. I, 206). At the hearing of January 20, 1962, he also

declared: "• • • he [Hayutin] knows that Mr. Hammer would rob you if he could" (T. 1/20/62, Vol. II, 37; Vol. I, 168). Hammer has "done it (Parker Petroleum Co.) a million dollars worth of damage" (T. 1/20/62, Vol. II, 14). "He tried to take Parker over and ruined it" (T. 1/29/62, 54). At the hearing of January 29, 1962, Judge Chandler called Hammer "a thief" and said of him and Occidental: "they have defrauded the Court" (T. 1/29/62, 82); and again on February 2, pp. 155, 160.

(2) Judge Chandler's intransigent and resentful attitude toward the decision of the Court of Appeals in *Occidental v. Walker*, 289 F. 2d 1, which had reversed him, is again illustrated in the following passage (T. 1/29/62, 14-15):

> "The Court: • • • they [Occidental] considered themselves the largest stockholder • • • they'd use you for a little while and then kick you out • • • it's a fairy story to think that they would undertake to do this in this Court, but they got by with it and didn't get in the penitentiary downstairs in the Occidental case, • • • if I'd known what I know about this case now the first time I went on the bench when they reneged on the contract I'd just have ordered Mr. Hammer and said, 'You either come here to my Court or I'll send a marshal after you and bring you here in chains, and you be here. • • • from the outset he never meant to go through • • •."

(3) The transcripts also showed not only the Judge's awareness that, if the record of these secret in-chambers doings became public, his disqualification would be apparent, but also his confidence that disclosure could be prevented.

Thus at the conclusion of the very first of these hearings, held in chambers on January 20, 1962, Judge Chandler concluded the proceedings with the following remark (T. 1/20/62, Vol. I, 197):

> "The Court: • • • we certainly owed Mr. Fellers (Occidental's then attorney) no obligation whatever. He thinks that because I don't like Dr. Hammer that I don't like him. Mr. Hammer will likely sue me for slander."

Also on January 20, 1962, he discussed the prospect of putting Hayutin on the stand (T. 1/20/62, Vol. II, 18):

> "The Court: • • • I'd like to hear it myself. If he gets on the witness stand, I'm going to be sitting there. I'll let the Special Master advise me. What do you say, Paul?
>
> Mr. Duncan: I say he'll get a good examination.
>
> The Court: He's not—Bert (Barefoot) is not going to let him take the witness stand with me sitting as the judge. I don't think • • •."

Another passage at the close of the January 20 hearings is equally revealing. It occurred to Mr. Barnholt that his then attorney (Mr. Bert Barefoot) may ask him if he had been talking to Judge Chandler. He asked the Judge for instructions should that question be put to him. The Judge advised a lack of candor tantamount to a lie (T. 1/20/62, Vol. II, 54-55):

> "Mr. Barnholt: Bert is going to call, • • •
>
> The Court: Do you think he'll ask you if you talked?
>
> Mr. Barnholt: I don't know, but that has occurred to me, and I want to just set it out. If that

is your wish, I can avoid the question, I am sure. I think I can avoid it without answering it.

The Court: You can say, 'I've been seriously considering it.'

Mr. Barnholt: Uh huh. I can figure out someing to say. I wanted to set that out for you to consider, too.

The Court: I wouldn't—I wouldn't be embarrassed if he caught me at it. If you led him to believe that you haven't and he should—you don't need to be embarrassed if he caught you at it.

Mr. Barnholt: The main thing is to keep the element of doubt there?

The Court: Yes, sir."

(4) Also at the Court of Appeals' hearing on April 10 the Court accepted "for the record" a letter from Judge Chandler, dated March 12, and addressed not to the Court or even to his own attorney (Mr. Irvine) but to Mr. Earl A. Brown, counsel "for the Common Stockholders of Parker Petroleum Co." The letter was offered by Mr. Brown (April 10, Tr. 14-18).

Occidental's counsel objected that it was not probative of anything because "not even in affidavit form", "self-serving" and not affording a "chance for cross-examination". "There is no reason apparent that the witness couldn't be here" (Tr. 14, 18).

This letter to Mr. Brown contained no denial of the secret in-chambers proceedings or of the accuracy of Ingram's transcripts. It did not even address itself to Occidental's petition then before the Court of Appeals. It contained no expression of intent or desire to appear before the Court of Appeals.

As to Ingram's testimony on March 12, this second indirect communication by Judge Chandler was as evasive and artificial as the one which he had presented to the Court of Appeals on March 13, (Point VI, *supra*). As to Ingram it said that "for some reason Ingram was hysterical", and that "his testimony contains several misstatements." Specification was significantly avoided and evaded.

The Court commented (Tr. 18):

> "We might say, at the same time, that we fail to see any relevance in it, with the exception, of course, of his statement about his experience with his court reporter."

(5) The hearing on April 10 closed with a statement by the Court, from which no one dissented, that the case had been fully argued and briefed, and that there will be "a decision very soon" (Tr. 164).

Amazingly the instant petition for certiorari, although noting the hearing on April 10, mentions none of the above revelations and events on that day.

VIII

The hearing by the Court of Appeals on April 20

(1) After the hearing on April 10 closed as aforesaid, Judge Chandler sent a telegram dated April 12 (Thursday) to each of the three sitting members of the Court of Appeals which opened: "Respondent requests hearing *en banc* because of importance of principles involved • • • (and) that further delay be avoided" (Court of Appeals Hearing, April 20, Tr. 3, 4). The telegram then had the presumption

to recommend the following decision by the Court of Appeals (Tr. 4):

> "Respondent suggests that if the Court of Appeals approves, pending final disposition of Occidental application to disqualify, he will invite all of his associates on this Court (that meaning his Court) to sit en banc with him to hear all other matters than those involving Occidental, which he has already stated will be assigned to another member of the Court for hearing."

The telegram did not indicate any desire or intention by Judge Chandler to appear in person. It did not mention Ingram or his testimony.

Upon receipt of Judge Chandler's telegram, and because of his request that "further delay be avoided", "the Court conferred immediately", and its clerk sent a notice dated April 16 (Monday) to all the parties that there would be a further—the fourth—hearing on Friday April 20 before the Court, this time sitting *en banc*. The day was Good Friday, but that was the earliest date on which all the judges of this huge circuit could assemble. The clerk also sent the following letter to Judge Chandler (April 20, Tr. 4, 5):

> "Dear Judge Chandler:
>
> There will be a meeting of the Judicial Council of this Circuit on Friday, April the 20th, 1962, at Denver, Colorado, at 9:30 a.m. or as soon thereafter as the Council may convene, to consider the question of the qualification of Chief Judge Chandler to hear and determine all matters in Bankruptcy Case No. 10807, Western District of Oklahoma, entitled, 'In the Matter of Parker Petroleum Co., Inc.,' at which time you may appear and be heard."

On the same date and also by direction of the Court, its clerk sent the following further letter (April 20 Tr. 5, 6):

> "Dear Judge Chandler:
>
> Reference is made to my letter to you written earlier today and notifying you of the meeting of the Judicial Council of the Tenth Circuit to be held in Denver on Friday, April the 20th. I am requested to advise you that it is the wish of the Council that you be present at such Council meeting if you can conveniently do so."

(2) The hearing on April 20 opened with notation by the Court of Appeals that, in compliance with Judge Chandler's aforesaid request, the Court was sitting *en banc* with five judges "for the purpose of hearing any matter that any party, any interested party, wishes to present" (Tr. 6).

Although Irvine was present, Phil E. Daugherty of Oklahoma City stated that he was then speaking for Judge Chandler; that the Judge had intended to present himself; but that at the last moment the Judge found himself occupied with another matter (of the nature of which Daugherty professed complete ignorance), but "would appear at any other time if the Council desired him to". Chief Judge Murrah observed (Tr. 32-3):

> "We certainly have urged Judge Chandler to be here in every way that we know how."

All counsel (including Judge Chandler's) thereupon agreed that the case be forthwith argued and submitted on the record "as it has already been produced and transcribed" (Tr. 9-11).

Daugherty then disclaimed making any argument on the merits. He gave the excuse that he had read the rec-

ord "hurriedly" only and "I don't know as much about it as the other lawyers" (Tr. 28). Irvine was equally unvocal.

Judge Murrah commented that neither he nor his associate judges knew of any authority for Judge Chandler to sit "*en banc*" with other district judges, as he proposed in his aforesaid telegram of April 12 to the Court (Tr. 37).

(3) At the close the Court stated, without dissent from anyone, that it regarded "this matter as finally submitted for decision" (Tr. 45).

The instant petition for certiorari, although noting the hearing and orders on April 20, mentions none of the above events of that day.

IX

Summary of Judge Chandler's disqualifying acts of gross judicial misconduct

Thus the proof at the four hearings by the Court of Appeals established without contradiction the following overt acts of misconduct by Judge Chandler scandalizing the administration of justice and inescapably compelling his disqualification and replacement as an emergency in the due administration of justice:

(1) In violation of due process of law and in violation of Canon 17 of the Canons of Judicial Ethics, judicial proceedings by Judge Chandler in chambers, adverse and prejudicial to Occidental's interests, done without notice to it, and with direction by him to secrete from it.

(2) In violation of 28 U. S. C. §753(b) and (c), refusals by Judge Chandler to permit the official court stenographer to transcribe and file his official recordings of the matters which transpired in chambers, and to furnish transcriptions thereof to Occidental pursuant to its requests and offers to pay.

(3) In violation of 18 U. S. C. §§1503, 1509, of Rule 45(f) of the Rules of Civil Procedure, and of judicial duty, efforts by Judge Chandler to dissuade and prevent the official stenographer from complying with the subpoena of the Court of Appeals to produce before it his official notes (then in his possession) of what had transpired in chambers on January 20, 25, 29 and 30 and February 2.

(4) In violation of 18 U. S. C. §§1503, 1509 and of judicial duty, efforts by Judge Chandler to intimidate the official stenographer into parting with his notebooks *after* such subpoena.

(5) In violation of 18 U. S. C. §§1503, 1509, and of judicial duty, seizure by Judge Chandler by verbal order of the stenographer's notebooks *after* such subpoena.

(6) In violation of 18 U. S. C. §§1503, 1509, efforts by Judge Chandler, *after* such subpoena, to pressure and intimidate the official stenographer into swearing falsely before the Court of Appeals.

(7) In violation of judicial duty and propriety and of Canons 3, 4, 5, 17, 34 and 36 of the Canons of Judicial Ethics, repeated overt declarations and acts by Judge Chandler of hostility, enmity and prejudgment against Oc-

cidental and its president, Armand Hammer, accompanied with threats, advice to sue them, and forecasts of extravagant adverse determinations and procedures.

(8) In violation of judicial duty and propriety and of the foregoing Canons of Judicial Ethics, characterizations by Judge Chandler of Occidental and of Hammer its president made in vituperative, profane, indecent and slanderous langauge.

X

The so-called "reasons" advanced for granting certiorari (pp. 6-8) rest on predicates foreign to the factual actualities of the case and to the emergency confronting the due administration of justice.

(1) The actual case and the findings by the Court of Appeals are not mere mental "bias," but overt acts of such gross misconduct and judicial improprieties as to scandalize the administration of justice and to make immediate intervention by the appellate court essential for protection of the fair and due process of law and the dignity of the courts.

Temporizing was neither possible nor conceivable.

With judicial restraint in its language, the Court of Appeals so declared in its *per curiam* opinion (24a-26a).

(2) The decisions cited in the petition for certiorari bear not the slightest resemblance in point of fact or law to the hard and urgent actualities of the instant case.

Their citation derives from substituting an imaginary case for the real.

(3) The attempt to whittle a procedural peg is far too feigned.

Scandal in the administration of justice cannot brook frustrating delays and quillets in the exercise of appellate supervisory and remedial duties and powers both statutory and inherent.

(4) Furthermore, in the instant case, while avoiding compliance with the Court's requests for his personal appearance, Judge Chandler fully participated by counsel throughout all four hearings, and wound up by personally requesting that the Court sit *en banc*; that "further delay be avoided"; and even that the Court mold its decision to his own suggestion (Hearing, April 20, Tr. 3, 4).

Conclusion

The petition should be denied, with costs.

Respectfully submitted,

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